

REMARKS

The Examiner has rejected claims 1, 2, 4-11, and 13-16 under 35 U.S.C. §102(b) as anticipated by Fawcett et al., U.S. Patent No. 5,802,526 (the "Fawcett reference"). Applicant respectively traverses. Anticipation requires that each and every limitation of the rejected claim be disclosed by the prior art. As noted by the Examiner, the Fawcett reference teaches that first the interactive voice response unit is operated upon the receipt of a telephone call. If the information available in the interactive voice response unit is inadequate to provide the information requested by the caller, then second the call is placed into a queue to be answered by the next available agent. In contrast, among the features of independent claim 1 are: determining agent availability to provide information to the caller seeking such information, and operating an interactive voice response unit to provide the caller with access to this information if the agent is unavailable. In other words, interactive voice response unit use is conditioned on failing to find an available agent. Thus, the Fawcett reference fails to anticipate.

Among the undisclosed features of independent claim 8 are an interactive voice response unit operable to respond to an interaction input when an agent workstation is unavailable to respond. Furthermore, the undisclosed features of independent claim 13 include: an interactive voice response unit operable to provide the caller with access to the desired information if the agent is unavailable to provide such information. As previously explained in connection with claim 1, the Fawcett reference provides an interactive voice response without disclosure of any type of contingency based on availability. Thus, independent claims 8 and 13 are not anticipated by the Fawcett reference.

Claims 2, 4-7, 9, 10, 11, 14, 15, and 16 depend from a corresponding one of independent

claims 1, 8, and 13 and therefore include all of the respective limitations thereof. It is therefore respectively submitted that claims 2, 4-7, 9, 10, 11, 14, 15, and 16 are allowable over the references of record for at least the same reasons set forth above with respect to the corresponding base claims.

The Examiner also rejected claims 1-17 under 35 U.S.C. §103(a) as being unpatentable over U. S. Patent No. 6,014,439 to Walker et al. (the Walker reference) in view of the Fawcett reference. Applicant respectively traverses. As an initial matter, the Walker reference is of a type that potentially can be overcome by the procedure of 37 C.F.R. §1.131, and the right to do so is reserved. Even assuming the reference is applicable, it is believed the rejection should be withdrawn per the explanation that follows.

*YSL raised
37 C.F.R. §1.131*
"To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

"The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification." In re Fritch, 23 USPQ2d, 1783-84 (Fed. Cir. 1992) (holding that a combination of references does not render a claim obvious due to a lack of suggestion or motivation to combine or modify). As a corollary, the patent office has recognized that "[i]f proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification." Manual of Patent Examining Procedure (MPEP) §

2143.01. MPEP § 2143.01 also states that "[i]f the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious." Likewise, there must be some reasonable expectation of success with regard to the asserted combination (MPEP § 2143.02). "A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention." MPEP § 2141.02.

It is respectfully submitted that the requisite suggestion or motivation to combine the references in the manner asserted is absent. The Walker reference is directed to distracting a caller distractions via an IVRU while "on-hold" waiting for a "live" attendant or agent. As noted in the office action, the IVRU fails to provide information sought by the caller. The on-hold distractions of the Walker reference include placing a call to a third party and an entertainment option. Regardless of the type of on-hold distraction selected, the Walker reference operational requirements include alerting the caller once an attendant becomes available. *See*, Walker, Figs. 8A-8C, and accompanying text. This goal of ultimately desiring to connect the caller to a live attendant to complete the call is inconsistent with an interactive voice response unit that provides information in lieu of an agent. (Accordingly, those skilled in the art would be discouraged from combining the references in the manner asserted.)

There is no Fig 8

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Furthermore, the Fawcett reference adds nothing to correct such deficiencies. (In fact, it teaches away from the reference combination.) With regard to the Fawcett reference, the Office Action on pp. 2-3 states:

"[o]nly when the information programmed onto the IVR system cannot answer the caller's questions, will the call be queued to wait for the next available agent. Queuing a

call 1st, rather than present the caller with the IVR menu, is inefficient because all the time that a call remains queued while the ACD searches for an available agent costs the company money in terms of air time charges billed by the phone company. By immediately presenting the caller with the ACD's IVR menu the caller is being presented with information that could possibly answer her question, rather than queuing the call and incurring phone company charges."

Answer?

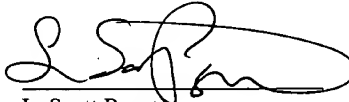
To begin, why would one incorporate the IVR-provided problem/answer approach of the Fawcett reference in a system that is primary directed to on-hold distraction of callers?

Moreover, the initial timing of an IVR connection first with the possibility of a live operator second in the Fawcett reference leads away from attempting a live operator connection first followed by an IVRU connection second as in the Walker reference. To make the disparity even greater, Walker then focuses on reconnecting to the live operator after the IVRU-based on-hold distraction options have been offered. Accordingly, it is respectfully submitted that the reference combination asserted under §103 is improper and should be withdrawn as to all claims.

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Accordingly, Applicant believes that claims 1-17 are in condition for allowance and are respectively requested to pass issue. Reconsideration of the present application is respectfully requested. The Examiner is encouraged to contact the undersigned by telephone to address any outstanding matters concerning the present application.

Respectfully submitted:

A handwritten signature in black ink, appearing to read 'L. Scott Paynter', written over a horizontal line.

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